

The City Council of the City of Newton held a regular meeting at 7:00 PM on Wednesday, August 11, 2004 at City Hall with the following present: Mayor Robert Mullinax, Council Members Wayne Dellinger, Tom Dixon, Tom Rowe, Anne Stedman, Roy Johnson, City Manager Edward Burchins, Assistant City Manager Glenn Pattishall, City Attorney Larry Pitts and City Clerk Rita Williams. Council Member Al Gaither was absent from the meeting.

ITEM 1 - CALL TO ORDER.

Mayor Mullinax called the meeting to order and welcomed citizens in the audience.

ITEM 2 - OPENING.

Council Member Dellinger led the Pledge of Allegiance.

ITEM 3 - APPROVAL OF MINUTES OF THE JULY 14, 2004 REGULAR MEETING.

A motion was made by Council Member Johnson, seconded by Mayor Pro Tem Rowe, and unanimously adopted that the minutes of the July 14, 2004 regular meeting be approved as submitted.

ITEM 4 - CONSIDERATION OF APPROVAL OF CONSENT AGENDA ITEMS.

A motion was made by Council Member Johnson, seconded by Council Member Dixon, and unanimously adopted that the following items on the Consent Agenda be approved as submitted:

A. Sewer charge adjustments. (adopted)

John Trivette	\$ 19.27
Michael Knight	\$ 43.75
Staci Rogers	\$255.30
Dennis Hart	\$110.42

B. Consideration of initiating court proceedings on the following code enforcement cases: (adopted)

B.1 - George Hunter nuisance case.

RESOLUTION #28-2004
RESOLUTION OF THE CITY COUNCIL
OF THE
CITY OF NEWTON

CONCERNING:

OWNER/OCCUPANT/TENANT: Mr. George Hunter
OWNER'S ADDRESS: 2154 Little Coulters Church Rd., Newton, NC 28658
PROPERTY ADDRESS: 601 E. Saunders Ave., Newton, NC 28658
TAX MAP REFERENCE: MAP 18N, BLOCK 06 LOT 01 (COUNTY Catawba)

PIN: 3740 13 13 9189

BEING A RESOLUTION directing the City Attorney for the City of Newton pursuant to Chapter 16 Nuisances of the City of Newton Code to petition the Superior Court of the General Court of Justice of the State of North Carolina for an order directing such owner named herein to comply with Order of the Code Enforcement Officer as authorized by Chapter 16, Section 16-4 Nuisance of the City Code; and

WHEREAS, the City Council of the City of Newton finds that the property herein described is a safety and health hazard to the public under the provisions of the

Nuisance Code and that the provisions of said Code have been complied with as a condition to the adoption of this resolution; and

WHEREAS, the owner of said property has failed and refused to comply with a lawful order of the Code Enforcement Officer to remove the same to meet the requirements of Nuisances Code within the time period prescribed;

NOW, THEREFORE; be it resolved by the City Council of the City of Newton that the City Attorney for the City of Newton pursuant to Chapter 16, Section 16-4 Code of the City be authorized and directed to petition the Superior Court of the General Court of Justice of the State of North Carolina for an order directing such owner named herein to comply with Order of the Code Enforcement Officer as authorized by the North Carolina General Statutes, said Order of the Code Enforcement Officer being dated July 6, 2004 and incorporated by reference into this Resolution.

ADOPTED THIS 11TH DAY OF AUGUST, 2004.

ROBERT A. MULLINAX, MAYOR

ATTEST:

RITA K. WILLIAMS, CITY CLERK

B.2 - Kim N. Clayton nuisance and junked vehicle cases.

RESOLUTION #29-2004
RESOLUTION OF THE CITY COUNCIL
OF THE
CITY OF NEWTON

CONCERNING:

OWNER/OCCUPANT/TENANT: Kim N. Clayton

OWNER'S ADDRESS: 1326 N. Main Ave., Newton, NC 28658

PROPERTY ADDRESS: 1326 N. Main Ave., Newton, NC 28658

TAX MAP REFERENCE: MAP 31N, BLOCK 02 LOT 04 (COUNTY Catawba)

PIN: 3740 05 08 4539

BEING A RESOLUTION directing the City Attorney for the City of Newton pursuant to Chapter 16 Nuisances of the City of Newton Code to petition the Superior Court of the General Court of Justice of the State of North Carolina for an order directing such owner named herein to comply with Order of the Code Enforcement Officer as authorized by Chapter 16, Sections 16-4 Nuisance of the City Code; and

WHEREAS, the City Council of the City of Newton finds that the property herein described is a safety and health hazard to the public under the provisions of the Nuisance Code and that the provisions of said Code have been complied with as a condition to the adoption of this resolution; and

WHEREAS, the owner of said property has failed and refused to comply with a lawful order of the Code Enforcement Officer to remove the same to meet the requirements of Nuisances Code within the time period prescribed;

NOW, THEREFORE; be it resolved by the City Council of the City of Newton that the City Attorney for the City of Newton pursuant to Chapter 16, Sections 16-4 Code of the City be authorized and directed to petition the Superior Court of the General Court of Justice of the State of North Carolina for an order directing such owner named herein to comply with Order of the Code Enforcement Officer as authorized by the North Carolina General Statutes, said Order of the Code Enforcement Officer being dated June 18, 2004 and incorporated by reference into this Resolution.

ADOPTED THIS 11TH DAY OF AUGUST , 2004.

ROBERT A. MULLINAX, MAYOR

ATTEST:

RITA K. WILLIAMS, CITY CLERK

RESOLUTION #30-2004
RESOLUTION OF THE CITY COUNCIL
OF THE
CITY OF NEWTON

CONCERNING:

OWNER/OCCUPANT/TENANT: Kim N. Clayton

OWNER'S ADDRESS: 1326 N. Main Ave., Newton, North Carolina 28658PROPERTY ADDRESS: 1326 N. Main Ave., Newton, NC 28658TAX MAP REFERENCE: MAP 31N, BLOCK 02, LOT 04 (COUNTY Catawba)PIN 3740 05 08 4539

BEING A RESOLUTION directing the City Attorney for the City of Newton pursuant to Chapter 14A Abandoned, Nuisance and Junked Motor Vehicles of the City of Newton Code to petition the Superior Court of the General Court of Justice of the State of North Carolina for an Order directing such owner named herein to comply with Order of the Code Enforcement Officer as authorized by Chapter 14A (Abandoned, Nuisance and Junk Motor Vehicles), Sections 14A-3; 14A-4; 14A-5.

WHEREAS, the City Council of the City of Newton finds that the property herein described contains vehicles which are safety and health hazards to the public under the provisions of the Abandoned, Nuisance and Junked Motor Vehicles Code and the provisions of the Nuisance Code and that the provisions of said Code have been complied with as a condition to the adoption of this resolution; and

WHEREAS, the owner of said property has failed and refused to comply with a lawful order of the Code Enforcement Officer to cause said vehicles to meet the requirements of Abandoned, Nuisance and Junk Motor Vehicles Code with the time herein prescribed;

NOW, THEREFORE; be it resolved by the City Council of the City of Newton that the City Attorney for the City of Newton pursuant to Chapter 14A, Abandoned Nuisance and Junked Motor Vehicles, Sections 14A-3; 14A-4; 14A-5 Code be authorized and directed to petition the Superior Court of the General Court of Justice of the State of North Carolina for an order directing such owner named herein to comply with Order of the Code Enforcement Officer as authorized by the North Carolina General Statutes, said Order of the Code Enforcement Officer being dated June 18, 2004 and incorporated by reference into this Resolution.

ADOPTED THIS 11TH DAY OF AUGUST, 2004

ROBERT A. MULLINAX, MAYOR

ATTEST:

RITA K. WILLIAMS, CITY CLERK

C. Tax refunds. (adopted)

<u>Year</u>	<u>Ref. #</u>	<u>Name</u>	<u>Reason</u>	<u>Amount</u>
2001	1	Ballard Doors	Property taxed in wrong jurisdiction.	\$520.95
2002	2	Ballard Doors	Property taxed in wrong jurisdiction.	\$463.73
2003	3	Ballard Doors	Property taxed in wrong jurisdiction.	\$408.41

D. Tax releases. (adopted)

<u>Year</u>	<u>Rel. #</u>	<u>Reason</u>	<u>Amount</u>
2003	50	Sold Prior to January 1st	\$ 4.84
2003	51	Value decrease	\$1,579.16

E. Consideration of approval of Powell Bill map. (adopted)

ITEM 5 - OLD BUSINESS:

A. Follow-up discussion on Court Street Commons code violation matter.

City Manager Burchins stated that the Council has been discussing the Court Street Commons code violation matter for several months and twice the Council has approved giving Mr. Cole Gaither extensions of time for completion of the project. Some progress has been made but not all. He further stated that the staff met with residents of the subdivision regarding their concerns.

Assistant City Manager Pattishall reviewed a copy of a certified letter which was mailed to Mr. Gaither outlining each item which needed to be corrected in the Court Street Commons Subdivision. He said the required reseeding and placement of straw in some areas has not been completed but Mr. Gaither's father has posted a bond to the City to take care of the matter once the weather is more favorable. Some mowing has been completed but all the areas outlined in the letter have not been mowed. Mr. Pattishall stated that rats, mice and snakes come with overgrown vegetation and in rainy times, water stands which could create a favorable environment for mosquitoes. He said the staff was asking Mr. Gaither to maintain the property and keep it mowed. He said residents in the subdivision have invested money in their homes and the subdivision needs to be kept maintained.

Mr. Burchins stated that the staff has worked with Mr. Gaither and he is not responsive. His parents are trying to make improvements but it is not their responsibility.

Mr. Dan Goodson, who lives in Court Street Commons, thanked the Council and City staff for their effort in trying to get the subdivision cleaned up and wished Mr. Gaither would do the same. He said there was one drainage matter which needed to be addressed and he stated that Mr. Gaither has failed to comply with the terms of the agreement he has with the City.

Mr. Burchins recommended legal proceedings be initiated against Mr. Gaither for completion of the project.

City Attorney Pitts stated that the property was actually owned by G. T. Corporation of Hickory (Gaither).

A motion was made by Council Member Dixon, seconded by Council Member Johnson, and unanimously adopted that the City begin initiating court proceedings against Mr. Gaither as recommended.

RESOLUTION #31-2004
RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF NEWTON

CONCERNING:

OWNER/OCCUPANT/TENANT: Mr. Cole Gaither/Court Street Commons Subdivision

OWNER'S ADDRESS: GT of Hickory, Inc 2845 Robinson Rd., Newton, NC 28658-854

PIN #: 3730-15-64-0974

TAX MAP

REFERENCE: MAP 27N, BLOCK 02 LOT 16 (COUNTY Catawba)

BEING A RESOLUTION directing the City Attorney for the City of Newton pursuant to Chapter 16 Nuisances of the City of Newton Code to petition the Superior Court of

the General Court of Justice of the State of North Carolina for an order directing such owner named herein to comply with Order of the City of Newton as authorized by City Code;

WHEREAS, the City Council of the City of Newton finds that the property herein described is a safety and health hazard to the public under the provisions of City Code; and

WHEREAS, the owner of said property has failed and refused to comply with an order of the City of Newton to remedy the conditions to meet the requirements of the City Code within the time period prescribed;

NOW, THEREFORE; be it resolved by the City Council of the City of Newton that the City Attorney for the City of Newton pursuant to City Code of the City of Newton be authorized and directed to petition the Superior Court of the General Court of Justice of the State of North Carolina for an order directing such owner named herein to comply with the City of Newton Code.

ADOPTED THIS 11TH DAY OF AUGUST, 2004.

ROBERT A. MULLINAX, MAYOR

ATTEST:

RITA K. WILLIAMS, CITY CLERK

B. Consideration of award of FY 04-05 capital equipment and vehicle needs financing.

Finance Director Baker reported that bids were solicited from eight financial institutions for funding FY 2004-05 capital expenditures and for the fire truck. He outlined the bids received and recommended the Council award BB&T Governmental Finance the bid to provide the requested funding.

The Council discussed the proposed funding at length, the length of time for the financing, extending the length of time for financing the fire truck, and the possibility of renegotiating the prepayment penalty.

After discussion, a motion was made by Council Member Johnson, seconded by Council Member Rowe, and unanimously adopted to award the bid to BB&T Governmental Finance at the stated interest rates not to exceed those indicated, to approve the Resolutions approving the financing and to authorize the staff to look at extending the time for financing in the future.

Resolution #32-2004
Resolution Approving Financing Terms

WHEREAS, the City of Newton, North Carolina (the "City") has previously determined to undertake a project for the installment financing of various capital equipment, and the Finance Officer has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated July 27, 2004. The amount financed shall not exceed \$652,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.25%, and the financing term shall not exceed five (5) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute

and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and a Project Fund Agreement as BB&T may request.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this 11th day of August, 2004.

Robert A. Mullinax, Mayor

Resolution #33-2004
Resolution Approving Financing Terms

WHEREAS, the City of Newton, North Carolina ("the City") has previously determined to undertake a project for the installment financing of a 2004 Custom Fire Engine and related equipment, and the Finance Officer has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated July 27, 2004. The amount financed shall not exceed \$370,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.97%, and the financing term shall not exceed fifteen (15) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and a Project Fund Agreement as BB&T may request.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance

Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5 All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this 11th day of August, 2004.

Robert A. Mullinax, Mayor

Rita K. Williams, City Clerk

C. Consideration of adoption of Capital Project Ordinance - Z F Corporation.

ITEM DELAYED UNTIL THE NEXT MEETING

D. Consideration of budget amendment for refinancing of existing debt.

Finance Director Baker reported that during the budget process, the Council discussed alternatives relating to improving the City's cash flow and the refinancing was contracted with various financial institutions. Also, during this process, the Council held a public hearing and authorized the staff to obtain the Local Government Commission's approval and adopted several required resolutions.

He said the final part of the process was to approve a budget amendment giving budgetary approval to the refinancing. He said this approves the proceeds from borrowing necessary to pay the debt which was refinanced and leaves \$1,229,353.35 to be used as determined by the City Council. Mr. Baker recommended the Council adopt an ordinance to pay off the refinanced debt and move the \$1,229,353.35 into the contingency areas of the budget until utilization of these funds is determined by the City Council.

A motion was made by Council Member Johnson, seconded by Council Member Stedman, that the budget amendment be adopted as recommended. Council Members Johnson, Stedman, Rowe and Johnson voted for the motion. Council Member Dellinger voted against it. The motion carried four to one.

ORDINANCE #2004.32 ATTACHED

Mayor Mullinax stated that he planned to call for a work shop to be held in September to see how funds that have been saved can be utilized. He said the City should not pay prepayment penalties. He further stated that he wanted the staff to review the advantages of making quarterly payments instead of annual payments and to look at the possible advantages of long-term financing (15 years) in lieu of 10 years.

Mayor Mullinax stated that the staff needs a guide to go by and that the Council will deal with these issues in September.

ITEM 6 - NEW BUSINESS:

A. Consideration of contract (and budget ordinance) with Western Piedmont Council of Governments on CDBG Grant - Moretz project.

City Manager Burchins reported that earlier this year, the City was notified that it had been awarded a grant from the N. C. Department of Commerce in the amount of \$450,000 to undertake an economic development project to construct an industrial access road for Moretz, Inc. who is occupying a portion of the old Broyhill building and will create approximately 45 jobs. The grant will enable the Broyhill property to be connected to the new Loop road that is under construction and will open up the property for future development as an industrial park.

Mrs. Sherry Long of Western Piedmont Council of Governments reviewed the administrative agreement for provision of grant management assistance concerning the project. She said the COG's service fee is not to exceed \$24,500 and the City will also be required to pay a flat fee of \$5,000 for services related to the project's planning activities. She said the total appropriation is \$600,000, of which \$450,000 comes from the CDBGED grant and \$150,000 from the City's matching contribution. The capital outlay for road improvements, which is \$570,000, includes engineering and construction.

Mr. Burchins recommended the contract with WPCOG and the proposed budget amendment be adopted.

A motion was made by Council Member Dixon, seconded by Council Member Rowe, and unanimously adopted that the contract with WPCOG for grant management assistance and the budget ordinance be approved.

ORDINANCE #2004.33 ATTACHED

B. Consideration of bids received for wash facility.

Public Works and Utilities Director Marty Wilson reported that bids were opened for construction of the vehicle wash facility on July 13th. The low bid was submitted by David Looper Construction Company in the amount of \$215,245. The City's project budget was set at \$150,000 which is \$65,245 difference.

Mr. Trey Wingate of W. K. Dickson, who designed the proposed facility, said they have talked with Mr. Looper to see if there was any changes which could be made to reduce the cost of the facility and there was none as the building requires quite a bit of piping and must be large enough to accommodate sanitation equipment.

The Council discussed the matter at length and voiced their concern about the increased cost of the project.

Mayor Mullinax stated that it was very frustrating for the City to plan construction on an estimated cost and the bids come in 50% higher than planned. He further said if the City doesn't accept this bid, it will have to do something to maintain vehicles and adhere to storm water mandates.

City Manager Burchins stated that the staff recently renegotiated the City's cellular phone contract which resulted in a \$29,000-\$30,000 savings which could be used to help pay the difference in cost of the wash facility.

After discussion, a motion was made by Council Member Dellinger, seconded by Mayor Pro Tem Rowe, to accept the bid and try to make adjustments in the budget to fund the difference. Council Members Dellinger, Rowe, Stedman and Johnson voted for the motion. Council Member Dixon voted against it. The motion carried four to one.

ITEM 7 - CITY MANAGER'S REPORT.

A. Report on DOT signalization.

Assistant Public Works and Utilities Director Doug Wesson gave a status report on the signalization project being done in Newton by the NC Department of Transportation. He said much of the signalization will be done overhead by fiber optic and some will be placed underground. Bryant Electric Company was the low bidder and will start directional bores in the north end of town very soon. He said this will minimize problems for businesses and residents. Signalization cabinets will be placed in the downtown area and pedestrian areas will be marked.

B. Request a public hearing to be held on September 7, 2004 for the purpose of borrowing funds for the Z F Corporation local economic development grant and for upgrading the Clarks Creek Wastewater Treatment Plant.

City Manager Burchins requested, and the Council concurred, for a public hearing to be held at the September 7th meeting for the purpose of borrowing funds for the Z F Corporation local economic development grant (incentive) and for funding the costs for upgrading the Clark Creek Waste Treatment Plant.

ITEM 8 - QUESTIONS FROM MAYOR AND COUNCIL.

Council Member Johnson reported on his attendance at an Air Quality Committee meeting held at Western Piedmont Council of Governments. He said representatives from the Environmental Protection Agency were there and that governmental representatives from the unifour area presented information on how this area not being designated as a non-attainment area would impact on future economic development. To date, the unifour area has received an undeclared designation until next year when data will be available from the new pollution indicator which is located behind the Rescue Squad in Hickory.

ITEM 9 - CLOSED SESSION TO CONSULT WITH THE CITY ATTORNEY ON A CONTRACTUAL MATTER - GS 143-318.11(a)(3).

Mayor Mullinax reported that the Council needed to have a Closed Session to consult with the City Attorney on a contractual matter.

A motion was made by Mayor Pro Tem Rowe, seconded by Council Member Johnson, and unanimously adopted that the Council go into Closed Session to consult with the City Attorney on a contractual matter.

After the Closed Session, Mayor Mullinax called the Council meeting back into session and stated no action was required on the matter discussed during Closed Session.

Mayor Mullinax stated the Council needed to have workshops in September on unserved water and sewer areas and needed capital improvements, which the Council has approved or not approved. There was Council concurrence to have the first workshop on September 7th at 5:30 PM prior to the regular meeting to discuss areas which are not currently served with water and sewer service.

City Clerk Williams was instructed to call Council members to determine a second workshop date for discussion on capital improvements.

Assistant City Manager Pattishall gave an update on the status of the new cemetery with the suggested name of Newton Memorial Gardens. After general discussion, the Council, by consensus, agreed on the name. He said the concrete and grading will soon be done and graves will be laid out in two sections. He said he planned to meet with individual property owners regarding the buffer area which will be located between their property and the proposed cemetery.

City Manager Burchins showed a suggested drawing of a entry way with a tower into the proposed cemetery. He said the gentleman who designed it is working with the City on landscaping design, etc. He said Frank Burns is a local stone mason who could build a stone entry way if the Council so chooses; however, no money has been budgeted for it.

Mayor Mullinax suggested that perhaps local funeral directors could be asked if they would like to participate in the cost of the tower.

There being no further business, the meeting was adjourned until 5:30 PM on Tuesday, September 7, 2004.

Respectfully submitted,

Robert A. Mullinax, Mayor

Rita K. Williams, City Clerk